

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

-----X
ANNA STERZENBACH and FREDRICK STERZENBACH,

Plaintiff,

-against-

LEAR CAPITAL INC.

Defendants.
-----X

Index No.:

Plaintiff designates Suffolk
County as the place of trial.
The basis of the venue is
Plaintiff's residence at the time
of alleged events.

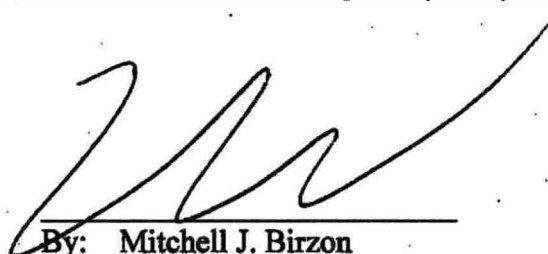
S U M M O N S

Plaintiff's residence at time of
events, site where transactions
occurred.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Smithtown, New York
May 23, 2019



By: Mitchell J. Birzon
BIRZON & ASSOCIATES
Attorneys for Plaintiff
222 East Main Street, Suite 212
Smithtown, NY 11787
(631) 265-6300

Defendants' Address:
Lear Capital Inc.
1990 Bundy Drive #600
Los Angeles, CA 90025

**SUPREME COURT OF THE STATE OF NEW YORK—
COUNTY OF SUFFOLK**

ANNA STERZENBACH and FREDRICK STERZENBACH

Plaintiffs,

-against-

LEAR CAPITAL INC.

Defendant.

X

Index No.:

**VERIFIED
COMPLAINT**

Plaintiffs, ANNA STERZENBACH and FREDRICK STERZENBACH, being duly sworn,
allege the following by and through their attorneys, Birzon & Associates.

1. My name is Anna Sterzenbach, and I resided in East Marion (Suffolk County) State of New York for all relevant purposes.
2. My name is Fredrick Sterzenbach, and I resided in East Marion (Suffolk County) State of New York for all relevant purposes.
3. Upon information and belief, the defendant Lear Capital Inc., herein after “Lear”, transacts considerable business in the State of New York.
4. Upon information and belief, the defendant Lear is incorporated in the State of California. Lear solicits business in the state of New York and derives continuous and significant business activities from New York State residents.
5. The defendant Lear solicits business in the County of Suffolk, State of New York. Lear obtains numerous Suffolk County residents as clients and derives benefits from business relationships that derive from their retention of Suffolk County residents as clients.
6. The defendant Lear provides Suffolk County residents investment advice to the public and to its clients.

7. The defendant Lear advises individuals, including the named plaintiffs herein, with investment advice regarding issues pertaining to the purchase and sale of securities, and in their stead, precious metals and coins.
8. The defendant Lear transacts business in the state of New York on a substantial basis and while doing so, advises individuals, including the plaintiffs, whether or not to sell investment securities, inclusive of mutual funds and publicly traded stocks and bonds, and also advises individuals whether or not to liquidate them and purchase precious metals as their replacement.
9. The defendant Lear is an investment adviser under the laws of the State of New York and pursuant to NYS General Business Law 359-eee.
10. Beginning on or about May 4, 2012 up to and including the current date, defendant Lear provided financial advice regarding the investments owned by the named plaintiffs herein including an Individual Retirement Account owned by plaintiff Anna Sterzenbach, an Individual Retirement Account owned by plaintiff Fredrick Sterzenbach, and a joint account consisting of publicly held stocks and securities, mutual funds, cash, and money funds, all held in a joint account owned by the plaintiffs.
11. The above referenced accounts were maintained by American Portfolios Financial Services, Inc., a New York corporation.
12. Commencing on or about May 4, 2012, the defendant engaged in a lengthy series of solicitations, communications, and correspondences with the plaintiffs.
13. The above referenced ongoing communications initiated by the defendant Lear, told the Plaintiffs that their investment portfolio was weak, that their investment advisors at American Portfolios had engaged in unprofessional, "bullying", and desperate tactics.

14. The correspondences from the defendant to the plaintiffs commencing on or about May 4, 2012 were designed to have the plaintiffs liquidate their life savings maintained at American Portfolios in the separate IRA's referenced above and the joint account referenced above, and to have the liquidated accounts transferred into "cash" and wired to the defendant.
15. At the time that the defendant Lear solicited the plaintiffs to liquidate their accounts and to transfer the proceeds to the control of the defendant Lear, the plaintiffs were aged 67 and 68 respectively.
16. As of June 25, 2012, plaintiff Fredrich Sterzenbach had an IRA worth \$25,638.00.
17. As of June 25, 2012, plaintiff Anna Sterzenbach had an IRA worth \$218,881.00.
18. As of June 25, 2012, the joint account owned by the named Plaintiffs had a value of \$410, 947.00.
19. On or about June 25, 2012 all of the above referenced accounts were liquidated at the behest of the defendant pursuant to a letter written by the defendant to American Portfolios and the defendant received the gross amount of \$655,466.00.
20. Upon receipt of the liquidated monies owned by the plaintiffs, the defendant invested all of the plaintiff's liquidated monies into gold.
21. Prior to the purchase of gold, the defendant had engaged in a series of correspondences, both written and oral, pressuring and creating a false belief that there was a global financial crisis on the cusp demanding that the plaintiffs abandon their prior investments in mutual funds, cash and securities and purchase only gold.
22. At the advice of Lear, the plaintiffs purchased ____ gold.

23. Shortly after the conversion of the liquidated assets of the plaintiff as set forth above into gold, the price of gold declined dramatically.
24. When the value of gold plummeted, the defendant Lear advised the plaintiffs to convert their gold for silver and silver coins.
25. The plaintiffs, after following the financial advice of the defendant to purchase gold, again followed the financial advice of the defendant to purchase silver.
26. The activities of the defendant, subsequent to accepting the wire transfer of the plaintiff's liquidated assets, resulted in commissions and storage fees paid to the defendant to the detriment of the plaintiff.
27. Aside from the commissions, storage fees, and other fees charged by the defendant to the plaintiffs, the fees charged by the defendant for the actual cost of the precious metal and coins were above market value for the gold bullion, silver bullion and coins.
28. The defendant continues to maintain the aforementioned separate individual IRAs and joint account of the plaintiffs.
29. The total amount of funds that liquidated and transferred which resulted in purchases in gold on or about June 25, 2012 amounted to \$665,466.00. In addition, \$100,000.00 was placed in a money market account.
30. The defendant has continued to advise the plaintiffs in regards to their lifetime investments. The plaintiffs entrusted all of their life savings, to the defendants on or about June 25, 2012 to their detriment.
31. The defendant accused the plaintiffs' former financial advisors of being unethical, unprofessional, and derelict in their duties as financial advisors and by doing so, wrongfully convinced the plaintiffs to liquidate all of their assets on or about June 25,

2012 and transfer the liquidated amounts to the defendant for the defendants' discretionary investments.

32. As of March 31, 2019, the plaintiff Anna Sterzenbach individual retirement account was worth \$89,677.00. At the time of transfer to defendant on or about June 25, 2012 this IRA had a value of about \$218,881.00.

33. As of March 31, 2019, the plaintiff Fredrick Sterzenbach's individual retirement account had a value of \$9,354.00. At the time of transfer to defendant on or about June 25, 2012 this IRA had a value of about \$25,638.00.

34. As of June 25, 2012, the plaintiffs joint account had a value of \$410,947.00 and was transferred to the defendant on or about said date.

35. As of March 31, 2019, the aforementioned joint account of the plaintiffs was valued at \$132,947.00.

AS AND FOR A FIRST CAUSE OF ACTION

36. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-35 as it fully set forth at length herein.

37. The defendants engaged in fraudulent conduct in inducing the plaintiffs to liquidate their separate IRA accounts and their joint account in June of 2012. On account of the fraud committed by the defendant, which included a series of emails and other communications indicating that plaintiffs' investments with American Portfolio was wrongfully invested and not sufficiently balanced, they did so in order to entice the defendants to invest in gold as their only investment.

38. The defendant profited from the fraud perpetrated on the plaintiffs as set forth above.

39. On account of the fraud committed by the defendants the plaintiffs have been damaged in an amount to be determined at a trial of this action.

AS AND FOR A SECOND CAUSE OF ACTION

40. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-39 as it fully set forth at length herein.

41. The defendant is an investment adviser under the laws of the State of New York.

42. As an investment advisor the defendant is charged with the responsibilities attendant to providing sound and reasonable investment advice.

43. The investment advice provided to the plaintiffs, who were at retirement age on or about June 2012, was inappropriate, wrongful, and constituted unsuitable investment advice.

44. On account of the unsuitable investment advice provided by the defendant to the plaintiffs, the plaintiffs have been damaged in an amount to be determined at a trial of this action.

AS AND FOR A THIRD CAUSE OF ACTION

45. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-44 as it fully set forth at length herein.

46. The defendant, when soliciting the business of the plaintiff, had a legal duty of care.

47. The defendant, when encouraging the plaintiffs to liquidate their retirement and joint savings and ultimately transfer them to the defendant for the purpose of purchasing gold and or other precious metals was an imprudent and negligent act.

48. On account of the negligence, the plaintiffs have been damaged in an amount to be determined at a trial of this action.

AS AND FOR A FOURTH CAUSE OF ACTION

49. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-48 as it fully set forth at length herein.

50. Throughout the entire term that the defendant retained the net proceeds of the plaintiffs liquidated IRA's and joint account beginning on or about June 25, 2012 and at all times thereafter, the defendant has received commissions and other payments, including "storage fees", etc. all at the expense of the plaintiffs.

51. On account of their wrongful investment buy the defendant of the plaintiff monies the defendant has been unjustly enriched by receiving commissions and other fees all of which to be returned to the plaintiffs.

AS AND FOR A FIFTH CAUSE OF ACTION

52. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-51 as it fully set forth at length herein.

53. The liquidation by the plaintiffs of their separate IRA's and joint accounts deprived the plaintiffs of the opportunity to leave said deposits in mutual funds and other security investments.

54. Had the plaintiffs not liquidated their assets at the behest of the defendant, they would have enjoyed the market appreciation of their investments commensurate with the mean market appreciation of said investments that were maintained with American Portfolio from on or about June 25, 2012 to the current time.

AS AND FOR A SIXTH CAUSE OF ACTION

55. The plaintiffs repeat, reiterates and realleges each and every allegation set forth in paragraphs 1-54 as it fully set forth at length herein.

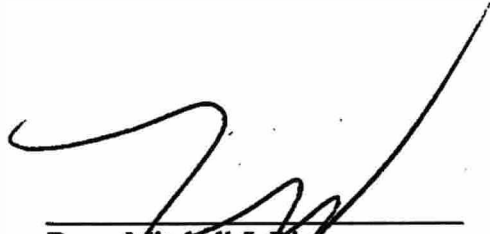
56. The actions of the defendant in providing false, misleading, inaccurate, and "pressure type practices" were designed to have the plaintiffs liquidate their worldly assets, transmit them to the defendant, all for purpose of having the defendant invest in the purchase of gold and other precious metals and for the defendant to earn commissions and other fees.

57. The financial advice and acts of the defendant were wanton, willful and grossly negligent as well as being intentionally misleading in all relevant regards.

58. On account of the above referenced actions of the defendant, the plaintiffs are entitled to receive punitive damages in an amount to be determined at a trial of this action.

WHEREFORE, on account of the above claims of the plaintiff and the issues set forth in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action, the plaintiffs demand judgment in an amount to be determined at a trial of this action as well as punitive damages as set forth in the Sixth Cause of Action together with costs, legal fees, disbursements, and for such other, further or different relief as this Court may deem just and proper.

Dated: Smithtown, New York
May 22, 2019



By: Mitchell J. Birzon
BIRZON & ASSOCIATES
Attorneys for Plaintiffs
222 East Main Street, Suite 212
Smithtown, NY 11787
(631) 265-6300

Index No.:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

ANNA STERZENBACH and FREDRICK STERZENBACH,

Plaintiffs,

-against-

LEAR CAPITAL INC.

Defendants.

SUMMONS AND VERIFIED COMPLAINT

BIRZON & ASSOCIATES

Attorneys for:

PLAINTIFFS
222 EAST MAIN STREET
SUITE 212
SMITHTOWN, NEW YORK 11787
(631) 265-6300

CERTIFICATION (Court Rule 130-1.1-a)

I hereby certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the annexed papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1.

BIRZON & ASSOCIATES

By: _____

Due and timely service of a copy of the within
Dated:

is hereby admitted.

Attorneys for:

NOTICE OF ENTRY

- ☐ SIR: Please take notice that the within is a true copy of a
duly entered in the office of the clerk of the within named court on.

NOTICE OF SETTLEMENT

- ☐ SIR: Please take notice that an Order of which the within is a true copy will be presented for settlement to the
Honorable one of the judges of the within named Court, at
on the day of 20

at a m /n m

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SUFFOLK

INDEX NO: 609855/2019

FILED ON: May 23, 2019

DISTRICT:

Anna Sterzenbach and Fredrick Sterzenbach,

vs

Plaintiff(s)

Lear Capital Inc.,

Defendant(s)

STATE OF NEW YORK, COUNTY OF ALBANY, SS.:

**AFFIDAVIT OF SERVICE
BY THE SECRETARY OF STATE**

Shayne Collen, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; that on August 14, 2019, at 3:30pm, at the office of the Secretary of State of the State of New York in the City of Albany, New York, deponent served the annexed Summons, Verified Complaint and Notice of Electronic Filing, on Lear Capital Inc.

Defendant in this action, by delivering to and leaving with Nancy Dougherty, Authorized Agent, in the Office of the Secretary of State of the State of New York, personally at the Office of the Secretary of State of the State of New York, one (1) true copy thereof and that at the time of making such service, deponent paid said Secretary of State the statutory fee, if required. Service was made pursuant to Section 307 Business Corporation Law.

☒ Service was completed by mailing notice of such service and one (1) true copy thereof by ☐ Registered or ☐ Certified Mail, # re142507328us, Return Receipt Requested on August 19, 2019 to said defendant at: 1990 Bundy Dr., #600, Los Angeles, CA 90025.

Papers so served were properly endorsed with the index number and date of filing.

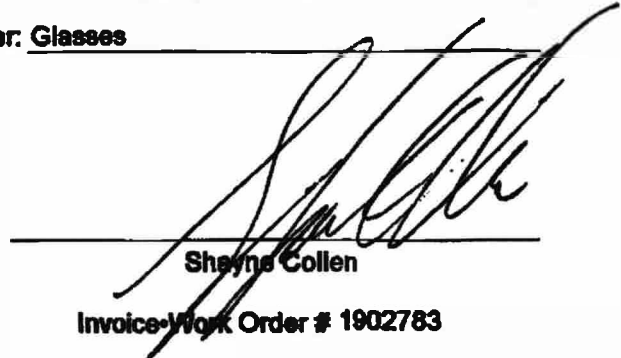
Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Description of the person served: Approx. Age: 45 years Approx. weight: 140 lbs Approx. Ht.: 5'4"
Sex: Female Color of skin: White Color of hair: Black Other: Glasses

Sworn to before me on August 20, 2019



SHARON COLLEN
NOTARY PUBLIC, State of New York
No. 6376361, Qualified in Albany County
Term Expires July 23, 2022



Shayne Collen
Invoice/Work Order # 1902783

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK**

**ANNA STERZENBACH and
FREDRICK STERZENBACH,**

Plaintiffs,

v.

LEAR CAPITAL, INC.,

Defendant.

Index No. 609855/2019

**STIPULATION TO EXTEND TIME
TO ANSWER OR OTHERWISE
RESPOND TO COMPLAINT**

IT IS HEREBY STIPULATED AND AGREED by and between plaintiffs Anna Sterzenbach and Fredrick Sterzenbach (together, "Plaintiffs") and defendant Lear Capital, Inc. ("Defendant"), through their respective undersigned attorneys, that Defendant's time to answer or otherwise respond to Plaintiffs' Complaint, filed May 23, 2019 (Doc. No. 1), be and is hereby extended until September 27, 2019.

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be executed in counterparts and that an electronic signature shall have the same binding effect as an original signature.

Dated: New York, New York
September 3, 2019

BIRZON & ASSOCIATES

By: 

Mitchell J. Birzon
222 East Main Street, Suite 212
Smithtown, New York 11787
Tel.: (631) 265-6300
Fax: (631) 265-6799
mjbirzon@bsb-lawyers.com

*Attorneys for Plaintiffs Anna Sterzenbach
and Fredrick Sterzenbach*

MITCHELL SILBERBERG & KNUPP LLP

By: 

Marissa B. Lewis
437 Madison Avenue, 25th Floor
New York, New York 10022
Tel.: (212) 509-3900
Fax: (212) 509-7239
mbl@msk.com

Attorneys for Defendant Lear Capital, Inc.

NYSCEF DOC. NO. 4

Case 1:19-cv-05231 Document 1-1 Filed 09/12/19 Page 14 of 16 PageID #: 19
RECEIVED NYSCEF 09/09/2019
Case No: 8098552019
Doc. No: 3801909050057

222 EAST MAIN STREET STE 212
SMITHTOWN, NY 11787

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT STATE OF CALIFORNIA
Court: SUPREME County: SUFFOLK State: NEW YORK
STERZENBACH, ANNA VS LEAR CAPITAL INC

Additional Documents:

SUMMONS AND VERIFIED COMPLAINT

NO. 4

RECEIVED NYSCEF: 09/09/2019

2 4 2

222 EAST MAIN STREET STE 212
 SMITHTOWN, NY 11787

COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT STATE OF CALIFORNIA
 Court: SUPREME County: SUFFOLK State: NEW YORK
 STERZENBACH, ANNA VS LEAR CAPITAL INC

AFFIDAVIT OF SERVICE

I certify that LEOPOLDO AVILA
 being first duly sworn, deposes and says: That he is a regularly appointed,
 qualified deputy Sheriff of the said County of Los Angeles, in the State of
 California, and over the age of twenty-one years, not a party to the action
 or related to either party, nor an attorney for a party, nor in any way
 interested in the within named action, and authorized to serve civil process
 SUMMONS AND VERIFIED COMPLAINT

On 09/05/19 at 11:39 AM and that he served the same on the defendant and/or
 respondent named below, on the date indicated, by delivering to and leaving
 with said defendant and/or respondent in the County of Los Angeles, State of
 California, personally, a true and correct copy thereof, with all notices and
 endorsements thereon, in the manner and the place and time shown below:

1. Name: LEAR CAPITAL INC.

2. Person served and title:

TERA FEAD/ DIRECTOR OF SALES AUTHORIZED TO ACCEPT ON BEHALF OF
 LEAR CAPITAL INC.

3. Person with whom left and title or relationship to person served:

4. Date and time of delivery

11:39 AM
 09/05/19

5. Mailing date, type of mail and place of mailing

6. Address, city and state:

1990 BUNDY DRIVE #600
 LOS ANGELES, CA 90025

() Home (X) Business